

NOVA SCOTIA COURT OF APPEAL

Jones, Hart and Chipman, JJ.A.

Cite as: R. v. Whitehead, 1993 NSCA 222

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

WILLIAM DEREK WHITEHEAD

Respondent

December 16, 1993

)
) James C. Martin
) for the Appellant

)
) Peter J. Katsihtis
) for the Respondent

)
) Appeal Heard:
) November 23, 1993

)
) Judgment Delivered:

THE COURT:

Appeal allowed and sentence varied to nine (9) years for conspiracy to traffic in a narcotic contrary to **s. 465(1)(c)** of the **Criminal Code** per reasons for judgment of Hart, J.A.; Jones and Chipman, JJ.A. concurring.

HART, J.A.:

William Derek Whitehead of Halifax was charged that he did unlawfully conspire with Howard James Smith of Halifax, Ronald Roy Hallett of Halifax, James Edwin Melvin of Halifax, Kirk Edward Peters of Halifax, Robert Richards of Lawrencetown Road in the County of Halifax, David Bruce Cotter of East Green Harbour, Scott Samuel Bussey of Halifax, Gary Neil Devanney of Halifax, and Clifford Alexander Matchem of Halifax to traffic in a narcotic, to wit: cannabis resin, contrary to s. 4(1) of the **Narcotic Control Act** and did thereby commit an offence against s. 465(1)(c) of the **Criminal Code**. The conspiracy was alleged to have taken place between October 21 and October 28, 1991. He was further charged that at or near East Chester in the County of Lunenburg on or about the 27th day of October, 1991, he did unlawfully have in his possession a narcotic, to wit: cannabis resin for the purpose of trafficking, contrary to s. 4(2) of the **Narcotic Control Act**.

The charges against Mr. Whitehead arose out of a very large drug smuggling operation which involved the transportation by sea of drugs from the Middle East to the shores of Nova Scotia and the off-loading of those drugs for landing in this country. During the course of the off-loading, apparently ten tons of the cannabis resin were jettisoned into the sea but three tons made its way to shore at East Green Harbour at a wharf located on the property occupied by Mr. Cotter. It was then transported by a large dump truck owned and operated by Mr. Whitehead towards Halifax and was stopped by the police at East Chester. Two other vehicles travelling in convoy with the dumpster were an Oldsmobile, driven by Clifford Matchem and occupied by Messrs. Peters, Richards, Bussey and Devanney, and a brown van driven by Ronald Roy Hallett and occupied by Howard James Smith.

At the time the dumpster was stopped it contained three tons of cannabis resin packaged in about thirty bales wrapped in various layers

of plastic. Mr. Whitehead tried to claim sole ownership of the drugs but did not know that he and his truck, the Oldsmobile and the van, and all members of the conspiracy had been under surveillance for the past week and the police were familiar with all of their meetings and trips to East Green Harbour and elsewhere in preparation for the arrival of the drugs.

In addition to the drugs, the R.C.M.P. also seized from the vehicles portable radios, \$5,020.00 in Canadian currency, and some small amounts of cannabis resin. At East Green Harbour they seized \$9,800.00 in Canadian currency, a loaded .44 calibre handgun, a loaded 12 gauge double-barrelled shotgun, a marine radio and an antenna. The radio equipment had been purchased by Matchem and picked up by Melvin and Whitehead. A shed on the Cotter property where the drugs were off-loaded and where the radio and antenna were found, had all of its windows covered by garbage bags. There were also tire tracks down towards the wharf which were positively identified as having been made by the dump truck.

The estimated street value of the cannabis resin seized by the R.C.M.P. at East Chester was between \$40,000,000 and \$60,000,000.

On May 4, 1993 before the trial commenced, William Derek Whitehead changed his plea to guilty on the charge of conspiracy to traffic in a narcotic and the Crown withdrew the charge of possession for the purpose of trafficking. Also on May 4, 1993, Scott Samuel Bussey changed his plea to guilty on the charge of conspiracy to traffic in a narcotic and was sentenced to four years.

After the trial was well under way, on May 17 Ronald Roy Hallett and Howard James Smith changed their pleas to guilty of the conspiracy charge and Hallett was sentenced to 5.5 years, while Smith received four years imprisonment.

The Crown has not appealed the Bussey, Hallett or Smith sentences.

The sentencing of Whitehead and Devanney took place on July 23, 1993. At that time the Crown took the position that Whitehead played a more important role in the conspiracy as the owner and operator of the dump truck and should receive a longer sentence than Bussey and Peters who had earlier been sentenced to four years. These two participants were described as muscle men only. By making his truck available and by transporting the drugs, Whitehead was considered to have played a greater role in the conspiracy than many of the others and the trial judge imposed a sentence of five years for his participation in the scheme. Mr. Devanney was found to be a ringleader of the group and was sentenced to 7 years. The Crown has appealed the Whitehead and Devanney sentences alleging that these were manifestly inadequate for a conspiracy of this magnitude.

At the time of his sentencing William Whitehead was 37 years of age and married with a young family. He came from a good family background. He had no previous record but, according to the trial judge, he continued to be found in the company of other drug dealers. He played an essential part in the conspiracy and did not cooperate with the police upon his arrest. He did, however, plead guilty before his trial commenced.

In sentencing Mr. Whitehead, the trial judge considered all of the usual factors that are necessary to take into account when sentencing for drug offences. He placed the predominant emphasis on general deterrence as has been so often directed by this Court. He correctly found that Mr. Whitehead played a prominent role among this group of conspirators. He did not in my opinion, however, appreciate the magnitude of this conspiracy to import and distribute drugs and the sentences imposed were inadequate to deter others from giving in to the desire to make large amounts of money from such schemes. It can be seen from this and other drug related cases coming before the courts of

this province that the people behind the lucrative drug trade are still able to entice others who have not been involved in lives of crime to fulfil the various roles necessary to successfully bring the illegal drugs from their source to the customers on the street. The bosses who finance the trade use various techniques to prevent their own arrest but once they have suckered other persons to participate in their schemes it is virtually impossible for those persons to escape their clutches in the future. There is no such thing as a one-shot gamble to make big bucks.

The value of the amount of hashish successfully brought ashore as a result of this conspiracy is estimated at between 40 and 60 million dollars when distributed on the street. With this type of return from only a partially successful landing, it is easy to see how the original purchase in the Middle East and the transportation by sea to this country could be paid for by those who finance large drug operations. With this kind of financial resource, people can be persuaded to take on tasks that otherwise they would never consider and it is this sort of person, who normally has no previous criminal record, who must be deterred by the sentences imposed by the courts on those who are caught in such a crime. This was a massive commercial operation which required extensive premeditation.

In my opinion, a fit and proper sentence for a person who participated in this conspiracy at the level of Mr. Whitehead would be nine years imprisonment. I would therefore allow the appeal by the Crown and vary the sentence to nine years for the conspiracy offence.

I might add that if this type of case continues to come before the courts of this province, it must be remembered that the maximum sentence is life imprisonment and sentences may have to increase until such time as their deterrent effect becomes effective.

J.A.

Concurred in:

Jones, J.A.

Chipman, J.A.

S.C.C. No. 02920

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

WILLIAM DEREK WHITEHEAD

Respondent

REASONS FOR
JUDGMENT OF:

HART, J.A.